

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FRANK BILELLO, individually and on behalf ) of all others similarly situated, ) ) Plaintiff, ) ) v. ) ) JPMORGAN CHASE RETIREMENT PLAN, ) JPMORGAN CHASE DIRECTOR OF ) HUMAN RESOURCES as administrator of the ) JPMorgan Chase Retirement Plan, ) ) Defendants. ) ) _____ )	<u>Via ECF</u>  Civ. No. 07-CV-7379 (RJS) (FM)  PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
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In further support of his opposition to Defendants' Motion to Dismiss, Plaintiff Frank J. Bilello respectfully submits the attached order granting plaintiffs' motion for class certification in *Jensen et al. v. Solvay America, Inc. et al.*, No. 06-273, slip op. (D. Wyo. Feb. 8, 2008) (the "Solvay Order") (attached as Exhibit 1).<sup>1</sup> The Solvay Order certifies several claims involving cash balance plans under ERISA, four of which are substantially similar to the claims brought by Mr. Bilello in this action:

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<sup>1</sup> Plaintiff also attaches the Solvay Complaint as Exhibit 2.

- Whether the design of Solvay's cash balance formula violates the anti-backloading rules in ERISA § 204(b)(1)(B), 29 U.S.C. § 1054(b)(1)(B) [Billello Counts One and Six];
- Whether Solvay's cash balance formula violates the nonforfeiture rules in ERISA § 203(a), 29 U.S.C. § 1053(a) [Billello Counts Four and Five];
- Whether Solvay provided a notice of significant reductions in the future rate of benefit accrual with sufficient information for the average plan participant to understand the effect of the changes as required by ERISA § 204(h), 29 U.S.C. § 1054(h) [Billello Count Seven]; and
- Whether Solvay adequately disclosed the material modifications to the Solvay Pension Plan that could result in reduction, losses or forfeitures of benefits that a participant might otherwise reasonably expect as required by ERISA § 102, 29 U.S.C. § 1022 [Billello Count Nine].

Solvay Order, Ex. 1 at 2-3.

In light of this supplemental authority, and the reasons stated in Plaintiff's Opposition, Plaintiff respectfully requests that the Court deny Defendants' Motion to Dismiss.

Respectfully submitted this 28th day of April, 2008.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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s/ Amy Williams-Derry

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